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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/650,118	08/26/2003	Stanley D. Arasmith	043505-262883	5876
826	7590	03/24/2006	EXAMINER	
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000				SELF, SHELLEY M
ART UNIT		PAPER NUMBER		
				3725

DATE MAILED: 03/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/650,118	ARASMITH, STANLEY D.	
	Examiner Shelley Self	Art Unit 3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 15 December 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-23,25-37,68-75 and 77-92 is/are pending in the application.
  - 4a) Of the above claim(s) 52-67 is/are withdrawn from consideration.
- 5) Claim(s) 6-23,25-37,71-75 and 77-92 is/are allowed.
- 6) Claim(s) 1-4,68 and 69 is/are rejected.
- 7) Claim(s) 5 and 70 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 21 September 2004 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

**DETAILED ACTION**

***Response to Amendment***

The amendment filed on December 15, 2005 has been considered but is ineffective to overcome the prior art reference.

The Examiner has approved applicant's amendments to the specification and Abstract.

The Examiner has approved applicant's corrected Oath.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 68 and 69 are rejected under 35 U.S.C. 102(b) as being anticipated by

Bateman (5,413,286) as noted in the previous Office Action. With regard to claims 1 and 68, Bateman discloses an apparatus for reducing the size of wood chips, said apparatus comprising: a sawing assembly (18) having an array of blades (40, 90, 100, 106) disposed upon a shaft (34) and configured to be driven at a cutting speed in a first rotation direction (rotational arrow, fig. 1), said shaft defining a shaft interference zone; a feeder assembly (12,14) configured to direct a flow of said wood chips along a feeder path (col. 5, lines 26-30) passing into and through said array of blades, said feeder assembly defining a feeder zone at least partially intersecting said array of blades; a topper assembly (13) positioned proximate said feeder path, said topper assembly located upstream of said saw assembly (fig. 1) relative to said feed path, said topper

assembly (13) configured to reduce the height of said flow of said wood chips such that said flow of wood chips does not tend to extend into said shaft interference zone (col. 5, lines 21-25, 30-37). Examiner notes that Bateman discloses the feed wheel (14) operatively coupled to topper assembly (13) such that the topper assembly levels the feed wheel (14) to inhibit tilting of the feed wheel (14) thus inherently reducing the height of said flow, i.e., a leveled wheel (14) will be lower than a tilted end of the feed wheel (14).

With regard to claims 2 and 69, Bateman discloses the saw assembly (18) positioned such that said shaft interference zone nearly intersects tangentially with said feeder zone (fig. 1).

With regard to claim 3, Bateman discloses said topper assembly (13) positioned such that said topper zone nearly intersects tangentially with said feeder zone (fig. 1, 11).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bateman (5,413,286) in view of Hughes et al. (3,585,761) as noted in the previous Office Action. Bateman discloses a rotary cutter with a plurality of cutting discs/blades (40) mounted upon a shaft/arbor (34) for rotation. Bateman does not disclose spacers. Hughes teaches the use of a rotary cutter (fig. 1) having a plurality of cutting discs/blades (27) mounted upon an arbor/shaft, wherein spacers (26) are disposed intermittently between the cutting discs/blades (fig. 1).

Hughes teaches this construction so as to minimize torque on the cutting discs/blades and to maintain the cutting discs/blades upon the shaft/arbor parallel configuration relative to each other. Because the references are from a closely related art and deal with a similar problem, (i.e. rotary members having a plurality of cutting discs mounted upon a shaft); it would have been obvious at the time of the invention to one having ordinary skill in the art to provide Bateman's rotary cutting assembly (18) with spacers between the cutting discs/blades (40) so as to minimize torque and maintain the cutting discs/blades upon the shaft/arbor relative to each other as taught by Hughes.

***Allowable Subject Matter***

Claims 6-23, 25-37, 71-75, 77-92 are allowed.

Claims 5 and 70 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: As noted in the previous Office Action, the prior art of record does not disclose or fairly suggest an apparatus for reducing the size of wood chips comprising the following:

•*a feeder assembly comprising paddle assemblies configured to be driven along a feeder path in a direction generally opposing said first rotational direction* in combination with the rest of the claimed limitations as set forth in claims 5, 23, 70, 80 and 86

•*said topper assembly comprises one or more topper blades and configured to be driven at a topping speed in said first rotational direction* in combination with the rest of the claimed limitations as set forth in claims 30, 81 and 89

•*a chute actuator configured to move said chute relative to said feeder assembly between said engaged position and a disengage position, said disengaged position characterized by said chute guiding said wood chips away from said feeder assembly* in combination with the rest of the claimed limitations as set forth in claims 32, 82

As noted above, the prior art reference, Bateman discloses an apparatus for reducing the size of wood chips wherein a feeder assembly comprises a wheel (14), conveyor (12) and hydraulic assembly/topper assembly (13) for feeding material to be further reduced/chipped to a sawing assembly (18) wherein the sawing assembly comprises blades, discs, stationary hammer assemblies and sawing hammers operatively coupled to a main shaft (34) for rotation in the same direction as the feeder assembly. Bateman however, is silent to any *chute, dam or topper assembly having blades driven in a first rotational direction* and instead discloses the topper assembly to be movably reciprocally via a hydraulic structure. Further Bateman does not disclose *paddle assemblies rotating in a direction generally opposing said first rotational direction*. Accordingly, Bateman neither anticipates nor renders obvious the claimed invention as set forth in claims 5-23, 25-37, 70-75 and 77-92.

Further, Serban et al. discloses an apparatus for reducing material wherein a chute (9) works in conjunction with a feeder wheel (8) and conveyor (16) to guide and feed material to be reduced/chipped to a rotary cutting member (3). Serban also teaches a chute assembly (9) having an end and a dam (15) interposed between the chute (9) and the feeder assembly (8, 16) wherein

the dam (15) is that pivotally movable about a horizontal axis (20) and spring (21), Serban teaches this construction so as allow large and difficult to reduce material/pieces to be reduced. Such that the large pieces effect the pivotal movement (20) and spring (21) to allow the distance to the rotor (3) to be enlarged and subsequently reduce the size of the large pieces. Serban is silent to any *topper assembly* and movement of the chute from an engaged position to a *disengaged position* and instead teaches only the chute in an engaged position with the conveyor (16) of the feeder assembly (fig. 1, 2). Serban also fails to disclose or fairly suggest a stationary dam and instead teaches the dam (15) to be pivotally movable for chipping larges pieces of material. Accordingly, Serban fails to anticipate or render obvious the claimed invention as set forth in claims 5-23, 25-37, 70-75 and 77-92.

Neither the prior art of record nor any combination thereof discloses the claimed invention as set forth in claims 5-23, 25-37, 70-75 and 77-92. Accordingly claims 6-23, 25-37, 71-75 and 77-92 are deemed allowable over the prior art of record and claims 5, and 70 contain allowable subject matter over the prior art of record.

#### ***Response to Arguments***

Applicant's arguments filed December 15, 2005 have been carefully considered but they are not persuasive. Applicant's arguments are drawn to criticality not positively recited in the claim(s). For example, Applicant states that the prior art reference, "*Bateman does not disclose or describe any structure that is identical to the topper assembly as recited in claims 1 and 68*". This however is not found persuasive because the claim(s) as written do not define any positive structure of the topper assembly and instead define the topper assembly in functional terms.

Claims 1 and 68 recite a topper assembly posited proximate said feeder path...configured to reduce the height of the flow of said wood chips... Bateman does disclose this functionality in the slide wheel (13). Bateman discloses that the slide wheel (13) is affixed to hydraulic cylinders (15) such that the cylinders (15) allow the slide wheel (13) to level or be moved vertically for enhanced feeding. Due to the vertical movement of the slide wheel (13), the height of the flow of the chips is inherently reduced. Thus Bateman does disclose the claimed invention. As to the argument that Bateman does not disclose or describe any structure. Examiner notes no structure of the topper assembly to be positively recited in claims 1 and 68. Accordingly Bateman does anticipate the claimed invention and therefore, Applicant's remarks are not deemed persuasive.

*Conclusion*

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley Self whose telephone number is (571) 272-4524. The examiner can normally be reached Mon-Fri from 8:30am to 5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, Derris Banks can be reached at (571) 272-4419. The fax phone numbers for the organization where this application or proceeding is assigned are (571) 273-8300 for regular and After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on accessing the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SSelf  
March 20, 2006



SPE, ART UNIT 3725  
DERRIS BANKS